89-1649

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

EDWARD I. ISIBOR

Petitioner

Versus

BOARD OF REGENTS OF THE
STATE UNIVERSITY AND COMMUNITY
COLLEGE SYSTEM OF THE STATE
OF TENNESSEE, ET AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

VOLUME 1: PAGES 1 TO 61

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APRIL 5, 1990

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL'S COURT'S REFUSAL TO RECUSE ITSELF AND THEREFORE EFFECTIVELY DENYING PLAINTIFF OF HIS DUE PROCESS AND STATUTORY RIGHT TO A FAIR TRIAL.
2. WHETHER THE COURT OF APPEALS ERRED IN ITS RULING THAT THE DEFENDANT'S INTEREST IN FULFILLING ITS EDUCATIONAL MISSION OUT-WEIGHED PLAINTIFF'S FREE SPEECH INTEREST.
3. WHETHER THE COURT OF APPEALS ERRED IN ITS FINDING THAT THE PLAINTIFF WAS NOT ENTITLED TO RELIEF UNDER TITLE VII.
4. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL'S COURT PRETRIAL RULING THAT DEFENDANTS GARLAND, COX AND FLOYD WERE ENTITLED TO QUALIFIED IMMUNITY FROM CIVIL DAMAGES UNDER 42 USC SECTION 1983.
5. WHETHER RULE 24 OF THE SIXTH CIRCUIT COURT CAN BE USED TO SUBSTITUTE FOR SUBSTANTIVE LAWS OF THE UNITED STATES INCLUDING THE 1866 CONGRESSIONAL CIVIL RIGHTS STATUE AND THE CONSTITUTION OF THE UNITED STATES.

PARTIES

1. The Petitioner, Edward I. Isibor, is an individual and resident of Williamson County, Tennessee. Petitioner is a Naturalized United States Citizen from Nigeria.

2. The Respondent, the Board of Regent of the State University and Community College System of the State of Tennessee ("Board of Regents") is the governmental body which manages the affairs, policies and practices within the University System which includes Tennessee State University. The members of the Board of Regents are Ned McWherter, Gwen R. Awsumb, William O. Bach, Howard E. Board, Clifford H. Henty, Ross N. Fairs, William N. Farris, Thomas Ingram, Arlis Roaden, J. D. Johnson, Richard A. Lewis, Hubert McCullough, Charles Smith, A.C. Clark, Howard Warf., David White, Ed Williams, III and Abby Eloten, All of whom are being sued in their official capacities as members of the Board of Regents.

3. The Respondent, Roy S. Nicks, is an individual a resident of Davidson County, Tennessee and the former Chancellor of the Board of Regents. Said Respondent is being sued individually for actions taken under color of law.

4. The Respondent, Thomas Garland, is an individual, a resident of Davidson County, Tennessee and the Chancellor of the Board of Regents. Said Respondent is being sued individually for actions taken under color of law.

5. The Respondent, Tennessee State University under supervision of the Board of Regents and is located in Davidson County, Tennessee.

6. The Respondent, Otis L. Floyd, is an individual, a resident of Davidson County, Tennessee and President of Tennessee State University. Said Respondent is being sued individually for actions taken under color of law.

7. The Respondent, George W. Cox, is an individual and a resident of Davidson

County, Tennessee. Said Respondent is being sued individually for actions taken under color of law.

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The Petitioner, Edward I. Isibor, prays that a Writ of Certiorari be issued to review the judgment of the United States Court of peals, Sixth Circuit.

OPINIONS BELOW

The Judgment Order of the United States Court of Appeals, Sixth Circuit entered December 14, 1989 appears at page 62 of the Appendix herein.

The Judgment Order of U.S. District Court for Middle Tennessee District Tennessee dated October 12, 1988 appears at Page 82 of the Appendix herein.

The Pretrial Order of U.S. District Court for Middle Tennessee District Tennessee dated August 23, 1988 appears at page 115 of the Appendix herein.

JURISDICTION

The final judgment of the United States Court of Appeals for the Sixth Circuit is dated December 14, 1989. This Petition for a Writ of Certiorari is filed timely within ninety (90) days thereof.

The jurisdiction of this Honorable Court rests upon 28 U.S. C. §1254 (1) and Rule 10 of this Court.

FEDERAL PROVISIONS INVOLVED

1. FIRST AMENDMENT:

   "Congress shall make no law respecting an establishment of religion, or prohibiting the free exertise, or of the press; or the right of the people peaceable to assemble, and to petition and Government for a redress of grievances."

2. TITLE VII:
   "It Shall be an unlawful employment practice for an employer - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin; or'

3. AMENDMENT XIV: SECTION 1
   "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the unites States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case arises out of a complaint filed by the petitioner on August 27, 1987 in the United States District Court for the Middle District of Tennessee, for salary discrimination under Title VII and retaliatory discharge under 42 U.S.C. Section 1983 and 1985 against the Board of Regents of the State University and Community College System of the State of Tennessee, (hereinafter Board), the individual serving as members of the Board, in their official capacities, and Dr. Roy S. Nicks (former Chancellor) and Thomas Garland (current Chancellor); Tennessee State University (hereinafter TSU), Dr. Otis Floyd, current President of Tennessee State University, Dr. George Cox, Administrator at TSU. In this suit, petitioner sought in addition to injunctive relief, reinstatement as Dean of the School of Engineering, and back pay against Defendants, Nicks, the Board and TSU as well as compensatory and punitive damages against the individual defendants (Respondents) Garland, Floyd and Cox.

On April 5, 1988 the District Court denied the defendant's motions to dismiss plaintiff's (petitioner's) claims against TSU under 42 U.S.C. Section 1981, 1983 and 1985 (R. 30 Order). The Court did dismiss, however plaintiff's claim for compensatory damages entirely and for retaliation under Title VII. The court further dismissed all Title VII claims for relief arising out of conduct prior to June 1, 1984 and for relief for retaliation arising prior to June 1, 1987. Summary judgment was also granted in favor of the defendants on all Title VII claims arising prior to January 1, 1985 based on the statue of limitations. All other motions to dismiss, and/or for summary judgment were denied without prejudice for their reassertion.

Also the trial court entered its Memorandum Opinion on August 23, 1988 in which it dismissed the defendant Roy Nicks as a defendant in his individual capacity and limited his liability to acts committed in his official capacity as former Chancellor. The court denied defendants

Board of Regents Motion for Summary judgment on the issue of its liability under Title VII, however, the court also found in favor of the defendants, Garland, Floyd and Cox granting their defense of qualified immunity on the Section 1983 claim (R. 83, Order).

The case proceeded to trial on October 6, 1988 the Honorable Thomas A. Wiseman, presiding, without a jury. Following some seven days of trial, the court issued its ruling from the bench on October 14, 1988. The court dismissed all claims for relief both under Title VII and 42 U.S.C. Section 1983 (R. 96, Order). Plaintiff timely filed a Notice of Appeal.

The Court of Appeals on December 14, 1989 affirmed all the rulings of the District Court.

STATEMENT OF FACTS

Edward Isibor, a Nigerian-born American citizen, was hired as the Dean of Engineering and Technology at Tennessee State University on August 15, 1975. He was awarded tenure in

1977 (TR. II Isibor 389). When the plaintiff first began his position, TSU did not have a graduate program in engineering. The level of outside funding for engineering was in the range of $25,000 to $30,000 per year. (TR II Isibor 396). Two of the engineering programs were not accredited nationally. Primarily, through plaintiff's efforts and his prior experience at such institutions as Howard University, Massachusetts Institute of Technology (MIT), Purdue University, Cleveland State University and Florida International University, TSU acquired national accreditation of all the four engineering programs and established a graduate program in engineering (TR. II Isibor 394-410). Enrollment at the School grew to double its size in 1975. Enrollment of White students jumped from 5 to 168. (TR II Isibor 418). Also the Engineering School was awarded the Koerper National Award by the National Society for Professional Engineers as having the best engineering program in the country in train-

ing students to become engineering professionals (TR. II Isibor 424). Throughout eleven years of his tenure as Dean at TSU plaintiff never received a written reprimand (TR IV - Isibor 143).

The Board of Regents has three unversities having engineering schools: Memphis State University (MSU), Tennessee Technological University (TTU) and Tennessee State University (TSU). For purposes of salary discrimination, the relevant period is from January 9, 1985 to June 30 , 1987. During this period, the Dean of Engineering at TTU was Leighton E. Sissom, a White male. The Dean of Engineering at MSU was Orville Eugene Wheeler, also a White male. (TR III Isibor 10, 11). Throughout the ten year period from 1977 to 1987, salaries for deans of engineering at the Board Universities varied considerably. (TR III Isibor - 11). Since 1979, the plaintiff became the most senior engineering dean in the State. Despite the plaintiff's seniority and high academic

qualifications he received a salary lower than that of any of his White counterparts at MSU and TTU (TR. III Isibor 15). In 1980 plaintiff filed an EEOC charge of discrimination and won a negotiated settlement with a recommended salary of $47,000 by President Humphries. However the Board of Regents under the direction of Chancellor Roy S. Nicks set plaintiff's salary at $46,624 to match the salary of the Dean of the School of Engineering at MSU (TR III Isibor 14). Again in 1983 (See Exh. 77) President Humphries recommended that the Board increase engineering salaries at TSU. The plaintiff was recommended for an increase from $49,888 to $52,632. Each of the salary increases was approved by the Board except that of the plaintiff (TR. III Isibor 18-20). Plaintiff was repeatedly advised that the reason for not increasing his salary to recommended levels was to maintain quality with that at MSU. (TR. III Isibor 21; Exhs. 78-80). Despite this policy, the salaries of the Associate Deans of

engineering at MSU and TSU were not maintained at an equal level. The TSU Associate Dean of Engineering Dr. Malkani (a Non-Black) consistently earned a higher salary than his counterparts at either MSU or TTU. (TR. III Isibor 25; Exhs. 81, 82 and 83). The amount of salary differential between the plaintiff and his White counterpart at MSU for the period in question was $12,726 (TR III Isibor 34).

Later in the course of term as Dean, the plaintiff became outspoken in mainly three areas of public concern: Management of funds, hiring practices of TSU and administrative autonomy. Plaintiff was invited to appear on several television and radio broadcasts to discuss these issues. Plaintiff's outspokenness on these types of issues prompted a warning from interim president Roy Peterson, wherein he advised plaintiff:

> "The Dean may speak as a private citizen on any issue he deems appropriate, however, any information on this (audit) report or any university finding should be addressed by this office." (Exh. 87.

Letter from Peterson to Isibor).

The attempt by Chancellor Garland and Interim President Roy Peterson to censor plaintiff's remarks by requiring that he channels his future comments through the "University Channels" met with concern by SBR General Counsel, Susan Short. (Exh. 88, 89 letters from Susan Short to Peterson and Isibor) At this time the plaintiff and interim president Peterson were candidates for the presidency at the University. Dr. Cox testified that he personally reviewed plaintiff's strengths and weaknesses in the Spring of 1987 and voted to recommend Dr. Isibor as one of the five finalists for the president of the university. (TR III Cox 486-486). Sam Latham testified that Chancellor Garland promised to terminate the plaintiff from the deanship and to send him back to the classroom.(TR II Latham 194-206).

On May 27, 1987 President Floyd sent a letter to the plaintiff praising him for the cooperation he has extended to him.

Two days later on May 29, 1987 President Floyd sent the plaintiff a second letter informing him that he had approved Dr. Cox's recommendation that the plaintiff be removed as Dean of Engineering.

The record shows that President Floyd received four salary increases during the fiscal year in which he terminated the plaintiff as dean. This was the first time in the history of the institution and of the State that a college president would receive four salary increases within one fiscal year. (TR. II Floyd 130-133). Also Dr. Cox testified that he was appointed to a newly created administrative position (Vice President of Administration) in an acting capacity as of October 1, 1987.(TR I Cox 144). He is now called the Vice President of Administration at the University. This position was never advertized and no one else was given an opportunity to apply for consideration for the job. These changes of status occurred for the two individuals at the university who

implemented the termination of the plaintiff as dean of the School of Engineering and Technology at TSU.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

Review by certiorari is appropriate in the case at bar under Rule 10(1)(a) and 10(1)(c) of the Rules of the United States Supreme Court because both the Sixth Circuit Court of Appeals and the Trial Court departed from the expected and usual course of judicial proceedings by failing to objectively (or unbiasedly) review all the issues and evidence that the plaintiff directed to their attention.

The Court of Appeals sanctioned the actions of the Trial Court when it acted under a biased state of mind in:

(1) Wilfully ignoring key testimonies on the plaintiff's side of the case.

(2) Misreading or twisting the contents of documentary and testimonial evidence in a biased manner to favor the defendants'

arguments.

(3) Relying on issues that the defendants established are irrelevant to the case at bar in making their rulings.

(4) Using claims not substantiated by the record as if they were proven facts in reviewing the arguments in this case.

(5) Publicly declaring a verdict in the case at the Trial Court level in favor of the defendants before hearing the plaintiff's side of the issue.

(6) Violating the innocent-until-proven-guilty doctrine by asserting that allegations of mistreatment by disgruntled personnel of the plaintiff to be true even when the defendants testified that they have never investigated any of them.

The courts below have acted in ways that are "So far departed from the accepted and usual course of judical proceedings". (Rule 10.1.(a) of the Supreme Court). Also the courts below decided a Federal question in

this case in a biased manner which conflicts with applicable decisions of this court. (Rule 10.1(c) of the Supreme Court)

The Supreme Court of the United States is the Court of the last resort that can bring about remedy where a litigant has been unjustifiably denied a fair and impartial trial. Therefore, the facts in this case merit this Court's review.

ARGUMENT

1. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S REFUSAL TO RECUSE ITSELF AND THEREFORE EFFECTIVELY DENYING PETITIONER OF HIS DUE PROCESS AND STATUTORY RIGHT TO A FAIR TRIAL.

The deep involvement of judges in the Nashville Political Network has created a conflict-of-interest situation which denied the petitioner of his constitutionally guaranteed rights to a fair trial both at the Court of Appeals and the District Court levels.

The petitioner raised questions about the hiring process at the university, the lack of autonomy and the mismanagement of millions of university funds that go unaccounted for. Efforts to direct the attention of state officials to this problem were unheeded. The petitioner wrote a letter to Governor McWhether in 1986 bringing these concerns to his attention in his position as chairman of the State Board of Regents. A response from the Governor was received in 1987 after the termination of the petitioner as dean of engineering. The Governor was silent on the conflict-of-interest issue that the petitioner raised in his letter.

(See Appendix E)

Over the years, corruption in government has stained the image of the State of Tennessee to the outside world. In 1981 Governor Ray Blanton was sentenced to three years in Federal Prison for fraud in selling liquor licenses. Mr. Jake Butcher, two time gubernatorial candidate is currently serving a prison term for fraud charges. According to the Nashville Banner article of Dec. 12, 1989, "The Ongoing Federal and State investigation codenamed "Rocky Top" has uncovered evidence of bribes, fraud, conspiracy and gambling violations among lobbyists and legislators, public officials and private business people." To date, about 37 people have been indicted. It has led to State Representative Ted Ray Miller and the Secretary of State Gentry Crowell allegedly shooting themselves to death. The involvement of judges in the scandal spreading throughout the state has threatened the integrity of the judicial system. For instances Judge Sterlin Gray who was indicted on charges of bribery committed suicide.

Under this climate, an honest citizen like the petitioner who spoke out unraveling corruption

in government is harassed and denied a fair trial in the courts. In 1984 the petitioner was threatened that the top officials that are working against him were powerful enough to see that court cases against the petitioner could be heard by a judge of their choice. (See Appendix D). The actions of the Trial Court judge appear to substantiate this threat.

In its January 24, 1990 article, under the heading "Old Pals Urged To Aid Thomas", The Nashville Banner informed the public of a leakage in a Federal investigation regarding Sheriff Fate Thomas. It was reported that Mr. J.J. Hooker heard about a bribery probe by the FBI on Sheriff Thomas who allegedly was soliciting a bribe for his support of a Bellevue zoning ordinance that was being sought by some developers for a shopping center project. Mr. Hooker relayed this information to his former brother-in-law Judge Gilbert S. Merritt who is the Chief Judge of the Sixth Circuit Court of Appeals. Judge Merritt leaked information on this secret bribery probe to one of his friends in the Nashville Political Network - Mr. John Seigenthaler, the Publisher of The Tennessean. Mr. Seigenthaler in turn leaked

the information to Attorney William Willis, a member of the political network and the attorney for both Sheriff Thomas and the Tennessean. Allegedly after Sheriff Thomas learned of this bribery probe, he changed his stance and wrote a letter opposing the shopping center project. Several questions have been raised in the newsmedia as to whether or not Judge Merritt obstructed justice by leaking information on this bribery probe. Also whether or not the judge had violated Cannon Three of the Code of Judicial Ethics. It is however undisputed that the members of this closely knit political network act in various ways to protect each other. Therefore it is reasonable to question whether or not Judge Wiseman took a biased position against the petitioner so as to chill his exposure of corruption practices involving some members of their insider group.

On the contrary, one could have expected Judge Wiseman to recuse himself sua Sponte from a lawsuit involving his friends,

family members or businesses in which he owns an interest. Since Sheriff Thomas is in the same political network with him, Judge Wiseman acted appropriately by recusing himself from the Federal case against the Sheriff. Then why did Judge Wiseman fail to recuse himself sua Sponte from the Isibor vs. Board of Regents Lawsuit in view of the following reasons:

1. Judge Wiseman was formerly a member of the state legislature and therefore has had years of close working relationship with state officials such as Governor McWherter and Defendant Tom Garland.
2. Judge Wiseman was a democratic gubernatorial candidate in 1974 who is still completely associated with the inner circle of the party's organization in the state.
3. Judge Wiseman served as the State Treasurer in the past and has had years of close working relationship with the State Comptroller Mr. William Snodgrass

that the petitioner had spoken against. Mr. Snodgrass was questioned at length in this lawsuit during deposition.

4. The wife of Judge Wiseman (Mrs. Emily Wiseman) is currently serving as the Commissioner of Aging for the State of Tennessee and reports to Governor McWherter who is also the Chairman of the State Board of Regents - The Respondents. It is reasonable to question whether or not the judge might choose to align himself with the Respondents so as to protect the job security and other perks for his wife.

5. Attorney William Willis, who represents Respondent Roy Nicks, Judge Gilbert Merritt, Governor McWherter and Judge Thomas Wiseman belong to the same Nashville Political Network.

According to 28 USC 455 (a) a judge is expected to disqualify himself from a case when his impartiality may reasonably be questioned. The statue states, quote:

"Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

During trial, the District Judge also refused to recuse himself. The Court of Appeals erred in affirming the District Courts action because it ignored several instances such as the following in which the District Court exhibited its bias:

1. Alleged Overexpenditure of the General Electric (GE) Grant

The petitioner alleged the declaration of a false overexpenditure on the GE grant which resulted in the defendants withdrawing some $59,000 from other school's private funds. To clear the air, the petitioner and members of his school challenged the defendants to produce the requisitions involved in this transaction. The defendants could not provide any documentation in this regard. Then during discovery, the petitioner subpoened the respondents to produce the

requisitions. They refused and the trial court supported the motion of the respondents saying with a condition that they did not have to produce the documentation: The Trial Court said "For the present, I'm going to quash the Subpoena duces tecum, and Ms. Wood is subpoenaed and if it becomes apparent that you're being unfairly treated in this matter Mr. Booker, I reserve the right to reverse myself." (TR I-451 Line 3-8) Mr. Booker was the petitioner's attorney at trial. The Trial Court therefore treated the petitioner unfairly when it asserted in its ruling with no substantiating evidence that the petitioner and his school overexpended the GE account. The Court of Appeals ignored the petitioner's call for it to review this question and to request the requisitions that have not to date been submitted.

2. Diversion of Funds from the Capital Outlay Funds for the School of Engineering and Technology.

In its ruling the Trial Court said, quote "Dr. Isibor's questions about reallocation of funds away from

engineering building, although Dr. Isibor insisted that Ron Dickson quote, diverted the money from the project, Carl Norman Johnson's affidavit clearly indicates that no money was diverted--"

(Page 99 Appendix B)

To the contrary both Ron Dickson and Carl Norman Johnson testified that the petitioner's claim regarding diversion of funds to be true. (See TR IV Dickson 446) and (Joint Appendix at Page 775: Exhibit 134).

The Trial Court therefore used erroneous data, not substantiated by the records in ruling in the case at bar. The Court of Appeals also chose to ignore this misuse of the evidence. The Supreme Court needs to review the records in this regard to ascertain the bias with which the courts below handled this case.

3. Computer Purchase

The University bought some 15 Franklin Ace 1000 Computer terminals at a listed price of $861.00 each, but the University reported an inflated price

on the inventory sheet of $1,847.64 was paid for each. To explain the difference respondent Cox said that insurance cost accounted for the difference. The trial court refused to accept this explanation. However the respondents came back at a later date and claimed that actually $1,583.00 was paid for each of the terminals. Still this cost was $722.00 over invoice for each terminal. Surprisingly the trial court accepted this dubious explanation which failed to answer why a computer terminal costing $861.00 each was listed at a purchase cost of $1,583.00 each.

The court of appeals failed to question this action by the trial court. In short, any answer by the respondents to a question was biasedly accepted as correct. The use of such incorrect data cannot be justified in a court, where impartiality is expected to reign.

(Joint Appendix Page 1114-1116)

4. Unequal Treatment

Judge Wiseman excluded any testimony based on individual perception from witnesses. For example on several occasions during the questioning of petitioner's witnesses, the trial court stated:

> "Sustained, sustained, Mr. Booker, you get on something that has to do with this lawsuit not what this man's perception is" (Joint Appendix Page 341)
> (Emphasis added)

> "Once again that is accepted for the purposes of this man's perception, not the truth of the matter contained in it." (Joint Appendix Page 350)
> (Emphasis added)

In spite of these restrictions on the testimonies of petitioner's witnesses, the trial court welcomed as established facts the contents of late filed Exhibit #19 which listed the perceptions of defendant Cox. Both the court of appeals and the trial court relied mainly on the contents of this exhibit in ruling against the petitioner.

5. Extrajudicial Source as a Basis for

Recusal

The court of appeals failed to trace where the district court judge got his information that the petitioner belonged to a faction opposed to the desegregation of Tennessee State University. Neither the petitioner nor any of his witnesses had ever appeared before Judge Wiseman on this issue. Also no evidence has been provided that any one else had ever made such a wild accusation against the petitioner in Judge Wiseman's court. Therefore one is led to the inescapable conclusion that Judge Wiseman got his information from an extrajudicial source. According to United States v Storey 716 F. 2d 1088 (6th Cir. 1983) such a personal bias as distinguished from a judicial one is sufficient to justify recusal in a case.

The trial court also declared during trial quote "I've said I'm going to disregard the other aspects of their

testimony." in reference to those he claimed belonged to this faction. However in the ruling both of the court of appeals and the trial court ignored the testimonies of key witnesses such as Samuel Latham, Fred Humphries and Richard Lewis.

6. Verdict Before Hearing Petitioner's Rebuttal

After plaintiff's proof at trial, defendants introduced in a new charge regarding alleged mistreatment of staff. Although defendants Cox and Floyd testified that they have never investigated any of the allegations, the trial judge used them as facts and declared, quote: "But Mr. Booker, your lawsuit is wholly without merit with one exception, and that's what I want to hear further proof on. That's the extra service pay request." (TR V 390)

In other words the trial court heard the defendants side of a new charge and before providing the plaintiff the opportunity to rebut, it decided in favor of the defendants. This announcement was widely publicized.

2. WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE DEFENDANTS' INTEREST IN FULFILLING ITS EDUCATIONAL MISSION OUTWEIGHED PLAINTIFF'S FREE SPEECH INTEREST.

In reviewing the petitioner's allegation of retaliation for the exercise of his constitutional rights of free speech, both the court of appeals and the trial court identified the following four tests. First, whether the employee's comments address matters of public concern, Connick v Myers 461 US 138, 145 (1983). The second task is to balance the employee's interest to speak against the employer's interest in promoting the efficient performance of its public service, Pickering v Board of Education 391 US 563, 568, (1968). Then the causation factor in which the employee must show the protected comments were a substantial or motivating factor in his discharge. Finally, in the fourth test the employer has the opportunity to show by a preponderance of the evidence that it would have discharged the

employee even absent the protected speech, Mt Healthy City Board of Education v. Doyle, 429, US 274 US 274, 287 (1977).

The court of appeals and the trial court erred in ignoring the testimonies of key witnesses of the plaintiff in conducting the various tests. Mr. Sam Latham, a local newspaper reporter testified in detail on his discussions with Chancellor Tom Garland and narrated how the Chancellor was displeased with the plaintiff for speaking out publicly on the University concerns (TR. II Latham 195-196). Also in his testimony, Mr. Latham testified on how the defendants planned to retaliate on the petitioner for speaking out on issues such as the mismanagement of funds at the university:

Q. What was the indication as to how to deal with Dr. Isibor?
A. Well, that....if he didn't come in line with what was considered unified course that was set, then he would be put back in the classroom.
Q. This is what was Dr. Nicks recommendation on how to deal with the problem?
A. Right.

Q. Was there any indication as to what was being done while Dr. Humphries was president in terms of dealing with that problem?

A. He did relay that that had been discussed with Dr. Humphries and that recommendation had been put to Dr. Humphries

(TR. 11 - Latham 198)

Also defendant Garland discussed with Mr. Latham on the procedure to be followed in terminating the plaintiff from the deanshi

Q. In terms of statements by Chancello Garland as far as sending Dr. Isibo back to the classroom, was there an indication given as to how the Chancellor would accomplish that; isn't the president the one who removes the dean?

A. Well, it would be done through the president; that the president would be the official-----make the offici demotion or removal.

(TR 11 Latham 200)

Dr. Humphries who was President at the university during ten of the twelve years the petitioner served as dean also testifi that a Vice Chancellor of the Board reques at a meeting with defendant Roy Nicks that he remove the plaintiff from the deanship. Humphries declined because there was no reason to justify such an action. To him,

the plaintiff was one of his best deans at the university. (TR IV Humphries 182-183) When Humphries declined this task was given to subsequent presidents to implement. Latham testified that Interim President Peterson (who assumed the presidency after President Humphries resigned) had been approached, even prior to the termination of the petitioner, by respondent Garland and and advised of the manner in which the firing would take place. It is important to note that the record shows that the respondents have acted on several occasions to chill the exercise of the freedom of speech. This fact was ignored by the courts below in weighing the Pickering balance. President Humphries testified that he was also requested to fire Sterling Adams who was the Executive Assistant to the President.

"Q. Did the request come from the Board of Regents

A. I believe that my testimony was that the Chancellor asked me to fire Sterlin Adams."

(TR. IV Humphries 180)

President Humphries declined to do this. But on the first day on the job Interim President Peterson fired Sterlin Adams to comply with the directives of the Board's Staff.

The Courts below also intentionally ignored the contents of the deposition of Richard Lewis who is Vice Chairman of the Board of Regents. Mr. Lewis, who is in a position to know the facts behind any decision by the Board or its staff, attributed the petitioner's outspokenness to the decision to terminate the petitioner:

> "Q. As far as that perception of yourse and people in the community, is tha perception that had Dr. Isibor not been so outspoken he would still be dean"
> A. Uh-huh
> Q. That's a yes"
> A. Yes"
> (Exhibit 173 on Page 1255 of Joint Appendix).

The court of appeals in its review of Marohnic v. Walker 800 F. 2d 613, 616 (6th Circuit 1986) stated that "(P)ublic interes is near its zenith when ensuring that publi

organizations are being operated in accord-with law----and seeing that public funds are not purloined." The petitioner in a similar situation to Marohnic, exposed what he and many others perceived as corrupt and wasteful practices. As a result of the petitioner's insistence on the truth, the public came to know that the amount of investment that the respondents first claimed to be only one million dollars was actually four million dollars. (Tr. IV Dickson 486). Also the respondents changed their story during trial on the difference in video machine receipts reported versus what was actually received. At first they said it was only $50.00. Then it was increased to $2,500.00 or $2,600.00 finally respondent Floyd testified it was $80,000.00. The public was pleased with the actions of the petitioner in this type of situations and as a result they took an unprecedented action to push him for the presidency at the university. (See Appendix J). The public interest served by the petitioner's outspokenness in this way was

not recognized by the courts below in making the Pickering balance test. Instead they regarded the petitioner as insubordinate for refusing to accept questionable explanations given by his superiors. Even nowadays in 1990, the public is still asking questions about lack of accountability for funds at TSU. (See Appendix H)

The courts below also relied extensively on issues that the respondents themselves said were irrelevant to the case at bar, in making their rulings. Respondent Cox, the man the respondents claim initiated the move to terminate the petitioner, testified that the only reasons for the termination decision were only those stipulated in the May 29, 1987 letter of termination.

> "Q. Okay, so these things listed as late-filed Exhibit 19. They didn't contribute to your recommendation?
> A. These were things --I could not separate those things happening and being in the back of my mind. These are not the things I stated in the letter as reasons why I made the recommendation
> (TR 1 Cox 359-360)

(This defendants late filed Exhibit 19 is in Appendix I).

Respondent Floyd who as President received the recommendations from Cox (then Acting Vice President of Academic Affairs) also ruled out the issues that the courts below relied on in tipping the balance in favor of the respondents. Floyd testified as follows:

"Q. Things that happened before you came in 1986 had no bearing on the decision of removing Dr. Isibor?
A. They did not." (TR VI Floyd 68)

Therefore both Cox and Floyd asserted that allegations of mistreatment of staff as not the reason for the termination decision. This is reasonable because they testified that they have never investigated any of the allegations of mistreatment of personnel and therefore there was no basis for declaring the petitioner guilty of the charges (TR 1 Cox 149). In its ruling the trial court said

"The court has observed the manner and demeanor of the many witnesses, although the court acknowledges and credits the testimony of witnesses who stated that they did not think that Dr. Isibor mistreated his employees, it also credits the accounts of the various

instances of mistreatment which were related; -----." Despite saying the above, the trial court regarded the allegations by some disgruntled former employees of the petitioner to be absolutely true.

Since the respondents testified that they have never investigated any of these allegations of mistreatment of personnel before making the termination decision then how did the courts below reached the conclusion that the petitioner mistreated personnel reporting to him and this led partly to the decision to terminate him.

The trial court alleged that the petitioner's outspokenness led to some disruption of university operations. To the contrary the letter of termination of May 29, 1987 did not mention any such disruptive behavior. Instead it praised the petitioner for his leadership. The only reference made in this regard to petitioner's outspokenness was by Mr. Ron Dickson at trial when he said:

> "I think it reduced the level of trust between my office and other office of the

institution, and made it difficult to communicate and get a sense of cooperation." (TR IV Dickson 456).

Later on Ron Dickson himself testified that no one had ever indicated to him that the plaintiff's speech on these issues reduced their level of trust in him or his staff.

"Q. Has there been any person that has indicated that they have less trust because of Dr. Isibor's concerns he had raised?
A. No, not directly."
(TR IV Dickson 485)

The matter of fiscal mismanagement at TSU was and still is a public issue that has received much attention in the news media. All the three finalists for the presidency at TSU including the petitioner and respondent Floyd expressed their views on this topic. Moreover, Ron Dickson who was the Vice President of fiscal affairs at TSU was singled out by several members of the public as being at least partially responsible for the misinvestment of one million dollars. Thus, he had reasons to feel that the level of the community's perception of the integrity or competence of his office

had dwindled. Indeed these perceptions may have been founded given the recommendations in the 1986 Audit Report which had several negative findings of deficiencies in the internal control and accounting procedures followed by TSU. Specifically the audit recommended (1) closer monitoring over investments (2) lighter controls over disbursement (3) internal controls over cash receipts and (4) more attention to drawndown procedures on federal funds and supporting documentation. (Exhibit 91, Joint Appendix Page 1066). Therefore just as in Rankin v McPherson - U.S.-, 107 S.ct. 2981 (1987), there is no objective evidence that the petitioner's speech actually "had any negative effect on the morale or efficiency" (Emphasis by underlining added) of the university. 107 S. Ct. at 291 (J. Powell Concurring). The clear weight of the evidence is to the contrary.

The courts below based their decisions on issues of mistreatment of staff and disrup-

tion of university operations of university operations which are not substantiated by the records. Respondent Cox testified as to the role he played as a member of the Search Committee for the Presidency at TSU in promoting the candidacy of the petitioner:

"Q. Did you play any role or the other with regard to whether the Committee included him in the five finalists?

A. Yes. The Chancellor had charged us as Chair of the Search Process to read very carefully the resumes of all the candidates, and then to come back and report on your findings, the strengths and weaknesses of your various candidates. So I participated rather vigorously in that process.

Q. Did you play any role specifically as to whether Dr. Isibor was going to be included or not included in the five finalists?

A. I think, again, I stated what I perceived to be Dr. Isibor's strength and weaknesses, and when it came down to finalizing or reaching the final five. I think I voted in favor of Dr. Isibor being a candidate being one of the five." (TR III. Cox 486) (Emphasis added)

The above review was conducted by respondent Cox in early part of 1987 between January 1987 to March 1987. The Courts below failed to examine the question, what happened between March 1987 and May 1987 that prompted

Dr. Cox to completely reverse his perceptions of the petitioner as an administrator? The testimonies of former President Humphries and Sam Latham have firmly established the fact that the Board of Regents Staff had planned to fire the petitioner for his outspokenness. This task was given to the new President Floyd (who was named in March 1987) and his acting Vice President for Academic Affairs to implement. Since this action was taken Dr. Cox was named to a new position (next in command to the President) as the Vice President of Administration. This position was not publicly announced and no other person was allowed to compete for the position. Therefore there is a direct inference that this was a payoff to him for helping to implement what the Board Staff wanted. Also the new President Floyd was given four salary raises just after his termination of the petitioner as dean. This is the first time in the history of the State that any president of a state institution will receive

four salary increases within one year.

The courts below also concluded without any substantiation from the records that by a preponderance of the evidence that plaintiff would have been removed as dean even if his public statements had not been made. The following facts raise serious questions in regard to the above conclusion.

1. The respondents considered the petitioner as one of several candidates for the presidency at the university from 1985 to 1987. During this period, the petitioner advanced among about one hundred candidates to the final ten and then to the final three in March 1987. The question now is, <u>if there were reasons to justify his termination as dean in 1987 why were the same reasons not used by the defendants to remove the petitioner from consideration for the position of the president of the university</u>?

2. The record shows that between 1975 to 1985 when the petitioner was not running for the presidency at the university, the petitioner in his annual evaluation was rated either as "very good" or "exceptional". This record also shows no written reprimand in his personnel file. President Humphries who testified as a defendants witness said that during the ten years (1975 to 1985) the petitioner was one of the best deans at the university (TR IV Humphries 189).

3. The respondents had requested President Humphries to terminate the petitioner during his tenure between 1975 and 1985 and he testified that he refused because there were no reasons to justify such an action. (TR IV Humphries 182-183). Then what are the "preponderance of evidence" that the courts below claimed were sufficient to terminate the petitioner even without his public speech?

4. In the seventy-eight years in the life of

institution, no dean except the petitioner has ever been fired. Yet the petitioner was the first dean to be rated so highly by the public as to rise up to becoming one of the three finalists for the presidency.

5. Richard Lewis testified that as Vice Chairman of the Board of Regents that he was of the opinion that the petitioner had done "an excellent job at TSU in terms of the engineering program, and most especially in terms of TSU as a whole" (Exh. 173 Deposition of Richard Lewis at Page 25). Furthermore Lewis added "If I had my way about it I would still consider him as being dean." Id.

6. The petitioners performance as dean netted a national award for the engineering program that he headed. For winning the Koerper Award by the National Society of Professional Engineers, the petitioner received several commendations for his leadership from Secretary of Education William Bennett on behalf of President Reagan, the State of Tennessee Legislature, the Nashville City Council.

Also the respondents (Board of Regents) passed a resolution honoring the petitioner and his staff forthis achievement.

ARGUMENT

3. WHETHER THE COURT OF APPEALS ERRED IN IT FINDING THAT THE PETITIONER WAS NOT ENTITLED TO RELIEF UNDER TITLE VII.

The petitioner has proven by a preponderance of the evidence in the courts below that a prima facie case of discrimination exists. The respondents then pointed out that the following unwritten guidelines are used in setting salaries: (1) Seniority (2) Degree Field (3) Salary of the president as cap (4) Availability of funds (5) Size and Complexity of the University.

Seniority

The Dean of the Tennessee Technological University (TTU) from July 1, 1975 to September 1, 1979 was James S. Brown (a White Man) and thereafter

Leighton E. Sissom (a White Man). In his testimony James Vaden, the Vice Chancellor of Fiscal Affairs of the Board of Regents said Mr. James Brown who did not have the doctoral degree was paid a higher salary than the petitioner (a Black Man) because of his seniority or longevity. (TR V Vaden 74). Mr. Vaden also admitted that although the plaintiff became the most senior engineering dean in 1979 at no time did his salary exceed the salaries of the new White engineering deans at Memphis State University (MSU) and TTU. (TR V Vaden 75).

The courts below failed to recognize that the seniority factor was being used in a discriminating manner. A White dean (James Brown) was entitled to a higher salary because of seniority but when a Black dean became the most senior in the State the rule did not apply to him and he was paid the lowest salary.

Degree Field: This factor was not proven

to be a reason for the lower salary for the petitioner because both the petitioner and the dean of engineering at Memphis State University are both civil engineers by profession.

Salary of the President as cap: The assertion that the salary of the Presiden of the institution was a cap except for those in the medical and law schools is also a pretext. The respondents paid the deans at both MSU and TTU a higher salary than the Black President of TSU for the 1984-85 fiscal year for an example. Obviously the respondents should not be allowed to use discrimination against the TSU President to justify discrimination against the petitioner. The proofs show that the TTU's dean of engineering made $200 more than the TTU's president in the 1986-87 fiscal year. Therefore, the respondents violated this unwritten guideline that the president's salary as the cap in setting the salaries of

engineering deans.

Availability of funds: The president of an institution should be the one to draw the conclusion as to whether or not there is money in the budget to fund his salary recommendations. The respondents repeatedly rejected TSU president's recommendation for salary increases for the petitioner despite the fact that the university said it had sufficient funds (TR IV Humphries 173). The court of appeals in supporting the biased stance of the district court said "The facts established that due to TSU's chronic overstaffing problems, the pool of funds from which salaries could be drawn as small." This is a pretext because the recommended salaries for other individuals such as Dr. Mohan Malkani (a non-Black) Associate Dean of Engineering at TSU were approved without question. Mr. Vaden also testified under oath that it was his understanding that funds were available at the university to pay the salaries recommended for the petitioner.

(TR. V Vaden 46).

In the 1980-81 year respondent Nicks also approved the payment of an academic year salary of $34,000 (the equivalent of a fiscal year salary of $42,500) to a White Male offered employment in the TSU School of Engineering as an Associate Dean under the supervision of the petitioner. This was at a time when the petitioner's salary was $40,652 for that fiscal year. Therefore, if funds were available to pay a White Associate Dean a salary higher than that of his boss, the Black dean, the availability of funds was used only as a pretext.

Size and Complexity: The overriding testimony in this regard is that of respondent Nicks himself. Nicks testified as follows:

"Q. You indicated that you had reviewed the program in 1979-80 found a degree of comparability?
A. Yes
Q. And again, the following year.
A. Yes
Q. And again, the following year?

Q. But then in subsequent years the salary of the Memphis State dean was allowed to increase above Dr. Isibor, is that correct?

A. I believe that is correct.

Q. Did you do any review of the salaries at that point in time that lead you to believe they weren't comparable?

A. No."

(TR V Nicks 138-139).

This testimony clearly shows that since no new study was conducted between 1980 and 1987 salary decisions had to be made on the basis of the 1979-80 study that found the programs at TSU and MSU comparable. Again the courts below ignored the above testimony of respondent Nicks in making their rulings. The court of appeals claim that "There was no attempt to make the salaries uniform among the universities under the Board's control." is therefore clearly erreneous. In fact on two occasions the salary recommended for the petitioner was reduced by respondent Nicks so as to make the salary of the petitioner equal to that of the dean of engineering at MSU.

1. A salary of $47,000 had been recommended for the petitioner for the 1981-82 fiscal year by the president as a result of a negotiated settle-

ment over an EEOC complaint. The recommended salary was reduced by the respondents so as to match the salary of the petitioner at TSU to that of the dean of engineering at MSU.

2. Again in 1983 respondent Nicks in his letter of March 15, 1983 to President Humphries disapproved the recommended salary increase for the petitioner. This was the only salary disapproved. Again that for the Non-Black Associate Dean was approved without question. Respondent Nicks said that he reduced the recommended salary of the petitioner from $52,632 to $51,888 so as "to keep academic administrative people at the various institutions together on a salary basis." (Exhibit 78: Letter of March 15, 1983 from Nicks to Humphries Joint Appendix Page 74).

Therefore this clearly shows that the court of appeals erred when it said in its ruling that "There was no attempt to make the salaries uniform among the universities under the Boards control."

Also in its ruling the court of appeals said "The Board referred the proposed increase to TSU's new interim president for review, but no recommendation was ever resubmitted to the Board." A review of the memo of July 2, 1985 from James Vaden to Interim President Peterson will show that the respondents did not request any review of the recommended increase in salary for the petitioner. (Joint Appendix Pages 1041 and 1042). Mr. Vaden only requested the interim president to review the recommended salaries for the following three employees - Ms. Juanita Bufford, Ms. Edwina Farmer and Ms. Forrestine Williams. Such a review as not requested for the petitioner. The record in this case again runs contrary to the claim of the courts below.

Finally, even if we limit the scope of this investigation to only how the petitioner was treated compared to other engineering administrators at TSU, we still find evidences of discrimination against the petitioner. As mentioned earlier, respondent Nicks approved a higher salary than that of the petitioner to

a prospective White Associate Dean of Engineering who was to be reporting to the petitioner who was then dean. (Joint Appendix Page 230). Also in the March 1983 letter to President Humphries respondent Nicks only referred to the petitioner as an academic administrator. He failed to recognize that Dr. Malkani the Non-Black Associate Dean is also an academic administrator and ought to have been treated the same way the petitioner was treated if the excuse he gave was not a pretext.

The court of appeals and the district court did not even consider the discrimination within the university (TSU) that the petitioner was subjected to in making their rulings.

In Price Waterhouse v. Hopkins, 57 U.S. L.W. 4469 (U.S. May 1, 1989) reversing and remanding 825 F. 2d 458 (D.C. Crt. App. 1988) the United States Supreme Court made a significant departure from the burden shifting rule previously established in McDonnell Douglass

Corp. v. Green 411 US 792 1973 and Texas Dept. of Community Affairs v. Burdine 450 US 248 (1981) which rule was relied upon by the trial court in this case. Based on the rule as now clarified in Price Waterhouse.

> "(A)n employer may not prevail in a mixed motives case by offering a legitimate and sufficient reason for its decision if that reason did not motivate it at the time of the decision." 57 U.S. L.W. at 4476 (Emphasis added)

In view of the above, the dubious data presented at trial regarding the size and complexity of the engineering programs cannot be relied on because respondent Nicks already admitted that no new study led to his actions to pay the dean of engineering at MSU a higher salary than that for the petitioner at TSU (TR V Nicks 138-139).

4. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIALS COURT PRETRIAL RULING THAT DEFENDANTS GARLAND, FLOYD AND COX WERE ENTITLED TO QUALIFIED IMMUNITY FROM CIVIL DAMAGES UNDER 42 USC SECTION 1983

In its pretrial memorandum of August 23, 1988, the trial court granted the defendants

Garland, Floyd and Cox motion for summary judgment as to the issue of qualified immunity from civil damages under Section 1983, relying solely on the fact obtained through discovery to that point. The trial court then focussed its inquiry initially into whether the issues addressed by petitioner were matters of public concern. (R. 97 16-24 Transcript of Ruling). After reviewing the various issues which petitioner spoke on, the trial court concluded: "Upon consideration of the foregoing, one matter is clear, public officials could reasonably have disagreed over whether plaintiff's "expression of concern" were protected by the First Amendment."
(R. 97 at 22 Transcript of Ruling of Trial Court).

The "clearly established right" at issue in the case at bar is a public employee's freedom to speak out on issues of mismanagement of public university funds. There can be no genuine dispute but that the defendants Garland, Floyd and Cox each appreciated the protected nature of plaintiff's outspokenness on this issue.

(See Supra III.D.). Floyd even admitted to Sam Latham that he "expected the plaintiff would file a lawsuit" after their removal of him as dean. Defendant Garland also was advised of the protected nature of the plaintiff's speech by General Counsel, Susan Short, as early as February 18, 1986 (See Exhibit 77 Letter from Susan Short). Given the high level of public and media attention being given to TSU fiscal policies from sources other than the petitioner, an objective reasonable observer would have recognized that the issues which the petitioner addressed were of obvious public concern. This being the case, administrators of public universities who possess even a modicum of awareness of the constitutional rights of their employees, knew or should have known in 1987, that retaliation against an employee for speaking on public issues would violate his right to free speech. Moreover Respondent Cox was a defendant

in the John Arthur, et. al. v. Humphries et. al, case No. 813261 in the U.S. District Court for the Middle Tennessee in which Judge L. Clure Morton supported the notion that "The plaintiff and all faculty members are possessed of the constitutional right to express opinions concerning the administration of the university and may freely communicate such opinion to the media, other faculty members and administrators." The plaintiffs in the above case are mostly White faculty members at TSU. The question now is, why is the petitioner in this case who is Black being denied the same speaking privileges, especially during a time that he was a candidate for the presidency?

Finally not only should this issue of qualified immunity gone to trial, but, at the very least petitioner was entitled to a factual finding by the trial court on which it based its conclusions that these respondents were entitled to qualified immunity.

5. WHETHER RULE 24 OF THE SIXTH CIRCUIT COURT CAN BE USED TO SUBSTITUTE FOR SUBSTANTIVE LAWS OF THE UNITED STATES INCLUDING THE 1866 CONGRESSIONAL CIVIL RIGHTS STATUE AND THE CONSTITUTION OF THE UNITED STATES.

The sixth Circuit Court of Appeals designated its ruling in this case as "Not Recommended for Full-Text Publication." Therefore, Sixth Circuit Rule 24 limits citation to only specific situations. This poses an undesirable restriction to full access to the total record in this case. The plaintiff has cited several instances of misuse of judicial authority both at the trial court and the court of appeals levels. Therefore, the use of Rule 24 in this case would be self-serving because it will hide the truth from the public. The testimonies of plaintiff witnesses such as Sam Latham were not disputed by the defendants; yet the courts below chose to ignore them. An objective reviewer of the record will surely ques-

tion these omissions. We are fortunate that the vast majority of judges in this nation perform their duties with high integrity and in compliance with the dictates of the constitution. However, the nation can ill afford to divert its attention away from the few instances of judicial misconduct. In furtherance of this view, the plaintiff has used his limited resources to seek justice in face of insurmountable odds.

A complete exposure of the record will hopefully serve as a useful teaching tool to students of law. Rule 24 of the Six Circuit Court does not favor the citation of unpublished decisions. Therefore, it does not have the appropriate check-and-balance feature that will allow close scrutiny of all decisions of the Sixth Circuit Court. In his lawsuit, the plaintiff has been subjected to several injustices both at the trial court and the court of appeals levels.

The trial judge boldly declared that "I've said I'm going to disregard the other aspects of their testimony." (TR. II Court 345-347).

The trial court then acted to do exactly that by blocking out of its consideration all of the testimonies from several of the plaintiff's key witnesses. This exclusion of relevant aspects of the testimonies of plaintiff witnesses effectively denied the plaintiff of his due process to a fair and impartial hearing. In fact, the trial judge did not even try to hide his bias for the defendants and against the plaintiff. He shouted at the plaintiff and his witnesses and openly treated the defendants and their witnesses in a friendly manner. At one instance, Judge Wiseman poured water into a cup and walked to the witness stand to give it to the defendant Cox. Such an expression was not extended to the plaintiff and his witnesses.

"The Court: Would you like some water?

The Witness: That might be helpful."
(TR III Court 420)

The plaintiff therefore believes that the total record in this case should be open to the public. The record would hopefully serve as a useful case study on the "dos and don'ts" in our judicial system.

A review of this court in its supervisory role is needed to see if or not Rule 24 will be used simply to conceal the unfair decision in this case.

CONCLUSION

For all of the foregoing reasons a writ of certiorari should be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit.

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